

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3942 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MAJIDBHAI MAMADBHAI INTWALA

Versus

SURAT MUNICIPAL CORPORATION

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Appearance:

MR RS SANJANWALA for Petitioner

MR PRASHANT G DESAI for Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 12/03/99

ORAL JUDGEMENT

Heard learned counsel.

In this matter, while deciding Civil Application No.8456/97 on 16.3.98 it was considered as to whether the respondent - Surat Municipal Corporation be directed not to auction away or sell the two plots i.e. (1) bearing Plot No.14/3 Katargam M-8 and (2) bearing Plot No.M-6 in Town Planning Scheme No.3. It is also considered as to

whether the Corporation be directed to fill up the creek (Khadi) on its own expenses and make the final plot buildable or in the alternative, the petitioner may be directed to fill up the creek (Khadi). It was also recorded in the order dt.16.3.98 that earlier the Court had passed an order directing the Corporation to consider the representation of the petitioner - applicant and it was also recorded at that time the learned counsel for the parties had stated that the Corporation was agreeable to give Floor Space Index (F.S.I.) as per the original plot. The Court then observed that it would be just and proper to give direction that the Corporation should consider the petitioner's representation for alternative plot as proposed in Civil Application and if the Corporation is agreeable to vary the Scheme, the Corporation may proceed further under the relevant provisions of the Gujarat Town Planning and Urban Development Act, 1976, (hereinafter referred to as 'the Act') as early as possible, preferably within two months from the date of the receipt of this order. Civil Application was disposed of accordingly. Two months period expired in May 1998 and by now a period of nearly one year is expiring from the date of the said order and yet Mr. Desai appearing for the Surat Municipal Corporation has submitted that no decision has been taken by the Corporation so far in this regard.

Through this Special Civil Application a direction has been sought with regard to the implementation of the Town Planning Scheme No.3 of village Katargam, that the respondent may not auction away the Plot No.14/3 Katargam M-8 in Town Planning Scheme No.3 and also Plot No.M-6 in Town Planning Scheme No.3 reserved for Secondary School or in any way utilise the same or transfer the same in any manner whatsoever and that writ be issued in the nature of mandamus directing the respondent to fill up the creek at its own expenses and give final Plot allotted to the petitioner in totally buildable condition.

I have heard learned counsel for both the sides. The fact that the land given to the petitioner is a creek has not been disputed before this Court at the time of arguments and it is clear that the same is not at all buildable. Despite this court's order dt.16.3.98 passed during the pendency of this petition, the Corporation has failed to take any decision and Mr. Desai appearing on behalf of Surat Municipal Corporation has submitted that this Court may pass appropriate orders. I find that so far as the variation of the Town Planning Scheme is concerned, it may not be possible for the Surat Municipal

Corporation to take any unilateral decision for varying the Town Planning Scheme. The power with regard to the Scheme vests in the Town Planning Department under S.71 of the Act. For that purpose, even if a proposal is sent by the Municipal Corporation for variation in the Town Planning Scheme, the Department may or may not accept said variation and even if they accept, one does not know how much time it will take. In the facts and circumstances of this case, this Court, therefore, finds that the Surat Municipal Corporation may opt any of the alternatives mentioned as under:-

- (a) In case the petitioner is prepared to wait till the question with regard to the variation in the Town Planning Scheme is considered and decided by the concerned Department under S.71 of the Act, Surat Municipal Corporation may make proper proposal for the variation of the Town Planning Scheme No.3 so that the grievance of the petitioner with regard to the area of the creek is redressed.
- (b) In case the petitioner is not prepared to wait for such time till the variation in the Town Planning Scheme No.3 is accepted and a subsequent Scheme is made and published or in case the Town Planning Department does not agree under S.71 of the Act to make any changes in the Town Planning Scheme No.3, which has already been finalised and published, the Surat Municipal Corporation may consider to offer alternative land to the petitioner out of Plot No.14/3 Katargam M-8 in Town Planning Scheme No.3 and/or out of Plot No.M-6 of Town Planning Scheme No.3, if it does not entail any violation of the Town Planning Scheme or it does not violate any relevant Rule, as it has been pointed out that these plots have been decided to be put to auction.
- (c) The Surat Municipal Corporation may fill up the creek on its own expenses and give final plot and make it available to the petitioner in totally buildable condition within a period of three months from the date the certified copy of this order is served upon the Surat Municipal Corporation, if at all the filling up of the creek is found to be feasible.

The Surat Municipal Corporation is, therefore, directed to act accordingly.

This Special Civil Application is, therefore,  
allowed in the terms as aforesaid and the Rule is made  
absolute accordingly with no order as to costs.

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